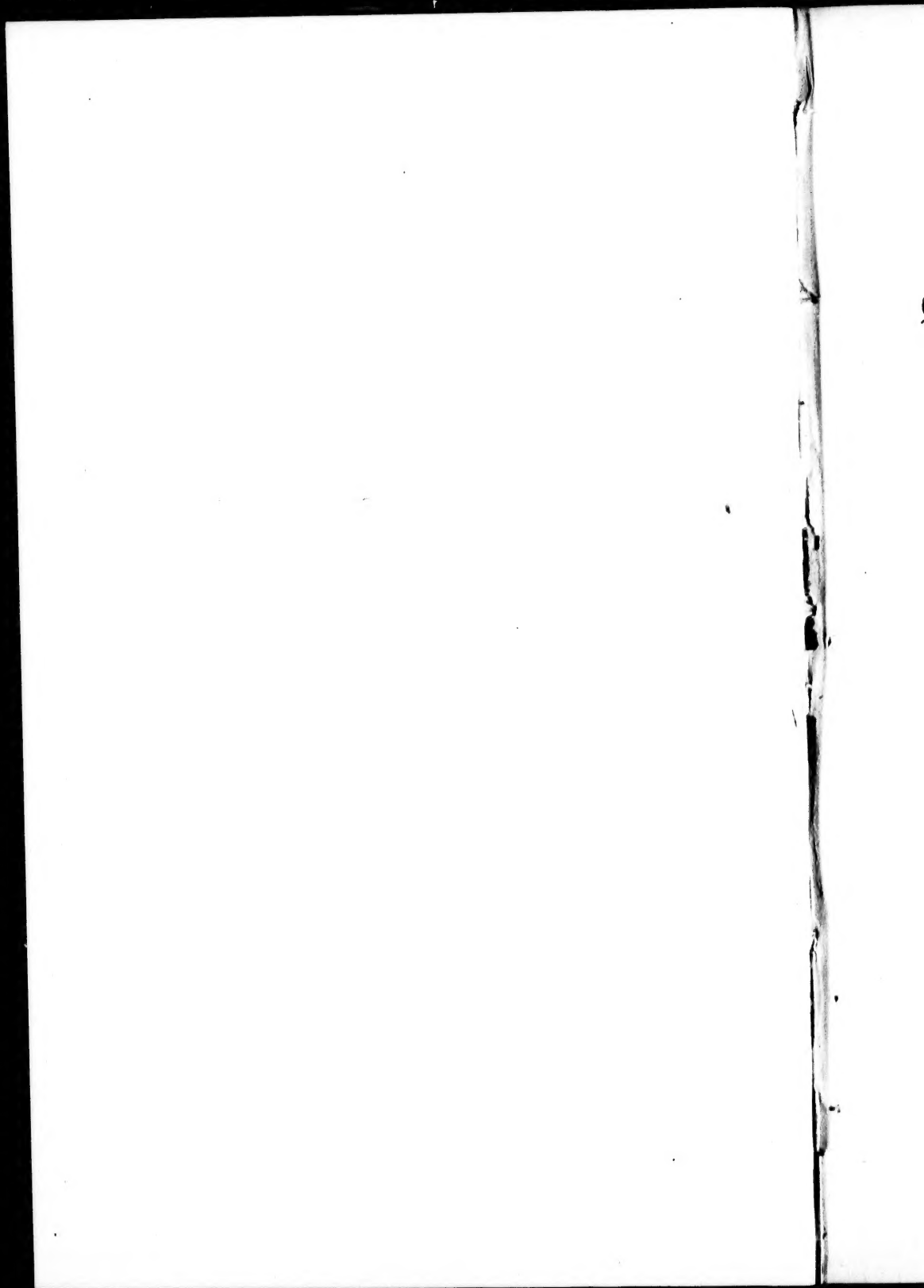




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Branch Line of Railway

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FROM

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1862.

1862
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LEASE.

This Indenture made this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, between the Port Hope, Lindsay and Beaverton Railway Company of the first part, and George Tate of the City of Toronto, in the Province of Canada, Esquire, and John Fowler of the Town of Cobourg, in said Province, contractor, of the second part, witnesseth, that in consideration of the rents, covenants, clauses and agreements hereafter reserved and contained, and on the part of the said parties of the second part to be paid, performed, observed and kept, the parties hereto of the first part have demised, leased and let, and by these presents do demise lease and let unto the parties hereto of the second part, their executors, administrators and assigns, the right and franchise to lay out, construct, make, finish, maintain and work a double or single iron railroad or way, at the cost and charges of the said parties of the second part, on and over any part of the country lying between the 'Town of Peterboro' in the County of Peterboro' in the Province aforesaid, and the line of Railway on the Station Grounds of the said party of the first part at the Village of Millbrook in the Township of Cavan in the County of Durham and Province aforesaid, and to take, convey and transport thereon passengers, freight, goods and property.

And also the right and franchise to contract, compound, compromise and agree with the owner or owners, occupier or occupiers of any lands upon which they, the said party of the second part, their executors, administrators or assigns may determine to construct the said Railroad either for the purchase of so much of the said land and privileges as they shall require for the purposes of the said party of the second part, their executors, administrators and assigns, or for the damages which the said owner or owners, occupier and occupiers, shall and may be entitled to receive of and from the said party of the second part, their executors, administrators or assigns, in consequence of the said intended

Railway being made and constructed in and upon his, her or their respective lands ; and also the right and franchise to fix and regulate from time to time (but subject to the conditions hereinafter expressed and contained) the tolls and charges to be received for transportation of all freight, goods, wares, merchandise and passengers upon the said Railroad, or for the use of any other convenience, erection or improvement built, occupied or owned by the said parties of the second part, their executors, administrators or assigns to be used therewith, such tolls not to exceed the amounts mentioned in the Schedule annexed to and forming part of these presents for the respective articles therein mentioned ; and also to ask, demand, receive, recover and take the said dues, tolls or charges subject to the conditions aforesaid, to and for their own proper use and benefit ; and also to regulate the time and manner in which freight, goods and passengers shall be transported, taken and carried upon the said Railroad, as well as the manner of collecting all tolls and dues on account of such transportation and carriage ; and also generally the right and franchise to do any and every act, matter and thing upon or connected with the said intended Railroad, and the laying out and constructing, making, maintaining, finishing and working thereof, which the said party of the first part, their successors and assigns might or could legally do under and by virtue of their charter, to have and to hold all and singular the rights, franchises and premises herein mentioned and described, and hereby demised or intended so to be with the appurtenances to them the said party of the second part their executors, administrators and assigns, for the full term of nine hundred and ninety-nine years from and ensuing the day of the date hereof, and fully to be complete and ended, yielding and paying therefor to the said party of the first part, their successors and assigns, yearly and every year during the said term the clear annual rent or sum of Five Dollars on the thirteenth day of November in each year if demanded, and the said party of the second part do and each of them doth hereby for themselves and himself, their and each of their heirs executors, administrators and assigns covenant, promise and agree to and with the said party of the first part, their successors and assigns, in the manner following, that is to say : That they the said party of the second part their executors, administrators or assigns, or some one or other of them during the said term, shall and will pay the yearly rent herein before reserved, on the days and in manner aforesaid if demanded ; and also shall and will bear and pay all rates, taxes, assessments and outgoings whatsoever, whether municipal, parliamentary or other-

wise, now levied or hereafter to be levied or imposed upon the said intended Railroad, or upon the land, buildings and property of the said party of the second part their executors, administrators or assigns owned or used by them in connection therewith at any time during the said term; and also shall and will within one year from the first day of January next completely finish, or cause to be finished, the said intended Railroad, and put it in running order to the satisfaction of the Engineer, for the being of the said party of the first part, their successors or assigns, and in all respects acceptable to the Government Inspector of Railways for the time being; and also shall and will, during the said term, run at least one train for the conveyance of freight, goods and passengers each way over the whole line of the said intended Railroad, from Peterboro' to Port Hope and from Port Hope to Peterboro', without unreasonable detention, during every working day in each year, unless therefrom prevented by any malicious or wanton act, or by the act of Divine Providence, or by any act arising from political discord or rebellion, and in case of any such prevention will use all proper and reasonable diligence to resume the working of the said Road; and also shall and will pay to the said party of the first part their successors, lessees or assigns, a rent or compensation for the use or right of running one or more through trains from Peterboro', or any point on the said intended Railroad, not less than two miles east of Millbrook to Port Hope and vice versa, for the conveyance of freight, merchandize, mails and passengers as hereinafter provided at all hours, so as not to interfere with or impede trains running on the line between Port Hope and Lindsay or any part thereof, such rent or compensation to be ascertained and paid weekly in advance as hereinafter provided; and also shall and will lay out, construct, make, finish, maintain and work the said intended Railroad, and exercise all and singular the powers, rights, franchises and privileges hereby demised in all respects in conformity with and under, and subject to the provisions of all or any acts or act of the Parliament of the said Province now existing or hereafter to be passed, granting, amending, extending, restraining, or in any wise affecting the Charter, or any amendment thereto, of the said party of the first part to build and construct the said intended Railroad, and all acts of the Parliament of the said Province, and all orders, directions and decrees of Railway Commissioners, Municipal Councils, and all properly authorized bodies or persons in any way affecting or relating to the said intended Railroad; and will indemnify and save harmless the said parties of the first part, their successors and assigns, against all

loss and damage which may happen to them in any manner, from the enjoyment and exercise by them the said parties of the second part, their executors, administrators or assigns, of the rights, powers, franchises and privileges hereby demised or which may in any way arise thereout; and shall and will keep the said intended Railroad, and all appurtenances thereat appertaining in good order, condition and complete repair, to the satisfaction of the Government Inspector of Railways, and of the Engineer for the time being of the said parties of the first part, their successors and assigns; and also shall and will permit and suffer the said party of the first part, their successors and assigns, and their agents, surveyors, engineers and workmen, at all reasonable times, to enter upon the said intended Railroad and inspect the same; and that they the said party of the second part, their executors, administrators and assigns, shall and will at the expiration or other sooner determination of the said term, peaceably and quietly yield up unto the said party of the first part, their successors and assigns, all and singular the powers, rights and franchises and privileges hereby demised, and will assign unto the said party of the first part, their successors and assigns, the said intended line of Railroad, and all the lands and buildings owned and used by the said party of the second part in connection therewith, and all appurtenances thereto belonging; and also shall and will during the said term insure and keep insured all buildings and erections now or hereafter to be erected upon or belonging or appertaining to the said intended Railway, in at least two-thirds of the value of such buildings and erections in one or more respectable Insurance Office or Offices in said Province, and pay the premiums for keeping such policies on foot, and in case of destruction or damage by fire to any of said buildings and erections, will rebuild and restore the same from and out of the monies received under and by virtue of such policy or policies of Insurance or otherwise; And also, that they, the said parties hereto of the second part, their heirs, executors, administrators or assigns, shall not nor will fix or establish, take or collect, any discriminating tolls or charges for freight, goods, or property, carried by the said Railway, which shall in any manner operate to the prejudice of the Port Hope Harbor and Wharf, but, in order to draw and attract trade and business to the said Harbor and Wharf, they shall and will at all times during the existence of this Lease fix, impose and exact upon freight, goods and other property conveyed over the said Railway, and shipped or intended to be shipped by water at any port or point within ten miles of the Port Hope Harbor and Wharf, or that may have been landed at any point within ten miles of the

said Harbor and Wharf of Port Hope, a tariff of charges for such freight, goods and other property at least fifty per cent higher than the charges upon similar articles conveyed by said Railway and landed at or intended for shipment from the said Harbor, and shall and will pay over the said fifty per cent to the Commissioners or other governing body of the said Port Hope Harbor for the time being; And also, shall not nor will assign, let or otherwise part with this present Lease, or the powers, rights, franchises and privileges hereby demised, or any or either of them, or any part thereof, without the consent in writing of the said party of the first part, their successors and assigns, first had and obtained; and it is hereby understood and agreed by and between the parties hereto that the said party of the second part, their executors, administrators and assigns, shall have the right to run through trains to convey freight, merchandize and passengers from Peterborough, or any other part of the said intended Railway not less than two miles east of Millbrook, to Port Hope, and vice versa, over the line between Port Hope and Millbrook, at all times, both day and night, and on each and every day in the year, during the full term of this Lease, upon payment to the parties of the first part, or to the lessees or occupiers of the said line between Port Hope and Lindsay, of a rent or compensation therefor, to be fixed by arbitrators chosen in the usual way, once in every three years, to be paid weekly in advance, and that the said arbitrators shall fix and determine the maximum daily number of such through trains and the maximum number of cars and engines of which the same shall be composed respectively, it being understood and agreed that the occupiers of the said line between Port Hope and Lindsay shall maintain that portion of the said line between Port Hope and Millbrook in good and proper working order at all times; and also that each and all trains working to and from Port Hope and Peterborough shall be so regulated as not to interfere or impede with the free running of any train working on said line between Port Hope and Lindsay, or on any part thereof, or any works necessarily being carried on thereupon; and that all trains working upon the said line between Port Hope and Lindsay, or any part thereof, or any such works shall be entitled to take precedence; Provided always, that nothing herein contained shall be held or construed to authorize the said party of the second part, their executors, administrator or assigns, to carry any way-freight, way-mails or way-passengers on such trains between Millbrook, (or any point upon the said intended line of Railway two miles east of Millbrook,) and Port Hope, it being hereby understood and agreed that such last mentioned freight,

mails and passengers shall be conveyed exclusively by the Lessees or proprietors of the said line between Port Hope and Lindsay; provided lastly, and these presents are upon this express condition, that in case of breach or non-observance by the said party of the second part, their executors, administrators or assigns of any or either of the clauses, covenants, provisions, conditions and agreements herein contained, and by and on the part and behalf of the said party of the second part, their executors, administrator and assigns, to be kept, done and performed, then, and in either of the said cases from thenceforth, and at all times thereafter, it shall and may be lawful to and for the said party of the first part, their successors and assigns, (at the expiration of six calendar months after notice in writing of their intention so to do, given by them to the mortgagees of the said party of the second part) to re-enter upon and take possession of the said intended Railroad structures and appurtenances thereto belonging, and also the said rights, powers, franchises and privileges hereby demised, and to re-possess and enjoy the same as if this demise had never been executed, and thereupon these presents and every matter, covenant, clause and thing herein contained shall cease, determine and be utterly null and void to all intents and purposes as if the same had never been made; and the said parties of the first part do hereby for themselves, their successors and assigns, covenant, promise and agree to and with the said party of the second part, their executors, administrators and assigns, that they, the said party of the second part, their executors, administrators and assigns, paying the said yearly rent as aforesaid, and observing, performing, fulfilling and keeping all and singular the clauses covenants, conditions and agreements herein contained, shall and may hold and enjoy the said rights, powers, franchises and privileges hereby demised, for and during the said term, without any interruption by the said party of the first part, their successors or assigns, or any persons lawfully claiming by, from or under them or any or either of them; and also that it shall and may be lawful to and for the said party of the second part, their executors, administrators and assigns, to use the name of the said party of the first part their successors and assigns if necessary, for the purpose of more fully enjoying the said powers, rights, franchises and privileges hereby demised, provided the said party of the second part, their executors, administrators and assigns, indemnify and save harmless the said party of the first part, their successors and assigns from and against every loss or damage in consequence thereof; In witness whereof the said party of the first part have hereunto caused the corporate seal of

the said Port Hope, Lindsay and Beaverton Railway Company to be hereunto affixed, and the President thereof has set his hand thereto as such President, and the said parties of the second part have hereunto set their hands and seal respectively, at the said Town of Port Hope, the day and year first above written.

(Signed,) The Port Hope, Lindsay and Beaverton Railway Company, by [Corporate Seal.]

J. SHUTER SMITH,
President.

(Signed,) GEORGE TATE. [Seal.]

(Signed,) JOHN FOWLER. [Seal.]

Signed, sealed and delivered in the presence of

(Signed,) THOMAS RIDOUT.

(Signed,) F. FERGUSON.

[Here follows the Schedules referred to, which have reference only to rates to be charged for freight.]

MORTGAGE.

This Indenture, made the Thirtieth day of November in the year of our Lord one thousand eight hundred and fifty-seven : between George Tate, of the city of Toronto, Esquire, and John Fowler, of the Town of Cobourg, contractor, of the first part ; William Cluxton, of the Town of Peterborough, Esquire, and David Smart, of the Town of Port Hope, Esquire, Trustees to the uses, intents and purposes hereinafter declared, of the second part ; The Port Hope, Lindsay and Beaverton Railway Company, of the third part : Whereas by an Indenture of Lease dated the thirtieth day of November in the year of our Lord one thousand eight hundred and fifty-seven, and made between the Port Hope, Lindsay and Beaverton Railway Company, of the first part ; and the said George Tate, and John Fowler of the second part ; the said Port Hope, Lindsay and Beaverton Railway Company did grant, demise, lease and let unto the said George Tate and John Fowler, the right and franchise to lay out, construct, make, finish, maintain, and work a double or single iron railroad or way, from the present line of Railway upon the station grounds of the said Company at the Village of Millbrook to the Town of Peterborough, with all the rights, powers, fran-

chises, privileges and authority belonging or appertaining to the said Company, in respect of the same, and subject to the conditions and provisions imposed upon the said Company by the several acts of the Legislature of the Province of Canada, relating to or affecting the said Company, as by reference to the said Indenture of Lease will more fully appear, to have and to hold the same unto the said George Tate and John Fowler, their executors, administrators, and assigns, for and during the full term of nine hundred and ninety-nine years, yielding and paying therefor the yearly rent or sum of Five Dollars, if demanded, and subject to the clauses, covenants, provisions and agreements, therein set forth and contained: And Whereas, the said George Tate and John Fowler have contracted and agreed with the said Company to build and construct the said Railway from the present line of Railway upon the said Station grounds at Millbrook, aforesaid, to the Town of Peterborough, aforesaid for the sum of Fifty Thousand Pounds, currency, assuming the distance not to exceed twelve and one half miles, and to complete the same within one year from the date of these presents: provided the Municipality of Peterborough will furnish and contribute the sum of Thirty Thousand Pounds, and the Municipality of Port Hope the sum of Ten Thousand Pounds, for that purpose, leaving the sum of Ten Thousand Pounds, which the said contractors agree to furnish and contribute out of their own means to make up the said sum of Fifty Thousand Pounds; and for which they are to receive in payment an equal amount in the stock of the Company, and as an inducement to the said Municipalities to furnish and contribute the said respective amounts, the said George Tate and John Fowler have agreed to pay to the said Municipalities respectively annually, during the continuance of the said lease, a sum equal to six per cent. upon the amount so to be furnished and contributed by the said Municipalities respectively, and as a security for such payment and for the completion of the said Railway, according to the terms of the agreement in that behalf, have also agreed to execute a Mortgage of the said Indenture of Lease, and the term thereby created, and all the rights, powers, privileges and authorities conferred upon them by virtue of the same, to the said parties hereto of the second part, as Trustees for the benefit of the said respective Municipalities of Peterborough and Port Hope: Now this Indenture witnesseth, that in consideration of the premises as well as in consideration of one dollar to them, the said George Tate and John Fowler, in hand by the said parties of the second part paid, the receipt whereof is acknowledged, the said George Tate and John Fowler, by and with the consent of the said

party of the third part testified by their being a party hereto : have, and each of them hath granted, assigned, transferred and set over, and by these presents do, and each of them doth grant, assign, transfer and set over unto the said parties hereto of the second part, as such trustees as aforesaid, the said indenture of lease hereinbefore mentioned and referred to, and all the rights, powers, franchises, privileges and authorities thereby conferred upon, or vested, or intended to be conferred upon or vested in them, or either of them, and the term thereby created or the residue thereof unexpired, and yet to come, and all the Railway and structures that is or are or may be constructed under or by virtue of the same, and all the Lands that may be set apart, designated, purchased, or acquired therefor, and all the materials that are or may be procured or provided for the same and all and everything belonging or appurtenant thereto : To have and to hold the same and all and singular the premises in the said Indenture of Lease mentioned and referred to, and thereby intended to be conveyed unto them the said parties hereto of the second part, as such Trustees, as aforesaid, and to the survivor of them, and to the executors, and administrators of such survivor, to his and their own use for and upon the trusts nevertheless, and for the intents and purposes hereinafter declared, of, and concerning the same : Provided always, that if the said George Tate and John Fowler or either of them, their heirs, executors, administrators or assigns, shall and will from time to time, and at all times hereafter, well and truly observe, perform, fulfil, and keep all and singular the clauses, covenants, conditions and agreements, hereinafter contained or referred to, on their or either of their part and behalf, to be observed, performed, fulfilled and kept, then these presents and everything herein contained to be absolutely void : And the said George Tate and John Fowler do hereby for themselves and each of them for himself, his heirs, executors, administrators and assigns, covenant and agree, to and with the said parties hereto of the second part, and their successors, and the survivor of them, and the heirs, executors and administrators of such survivor, as Trustees as aforesaid, that provided the said Municipality of Peterboro' will furnish and provide the said sum of Thirty Thousand Pounds ; and the said Municipality of Port Hope the said sum of Ten Thousand Pounds, to be expended in and about the construction of the said intended Railway, and pay over the same to the parties hereto of the first part, as the work on the said intended Railway proceeds, upon the monthly estimates of the Engineer of the said Company, for the time being (such monthly estimates to bear a proportion to the amount of the whole work to be done, such

Engineer to be acceptable to the Town Council of the Town of Peterborough) of the value of the work actually done and material delivered in the following amounts or proportions, respectively, that is to say : the Town of Peterborough paying, and to pay, three-fifths of the amount of such monthly estimates ; and the Town of Port Hope one-fifth part thereof ; the remaining one-fifth being assumed or paid by the said parties of the first part, always deducting however from every such monthly estimate a drawback of ten per centum thereof, which ten per centum is to be withheld from the said George Tate and John Fowler, until the completion of the said Railway, and to be paid over in the same proportions within thirty days after the acceptance of the said Railway by the said Engineer, as complete ; then that they the said George Tate and John Fowler, their heirs, executors, administrators, and assigns, shall and will purchase and procure the right-of-way for the said proposed Railway, from the line of Railway on the said Millbrook Station to Peterborough, aforesaid ; and lay out, construct, and build the said intended Railway, in manner following, that is to say : Commencing at some point on the line of the Port Hope, Lindsay and Beaverton Railway on the Station grounds at Millbrook, aforesaid, and extending thence to the said Town of Peterborough ; the banks of the said Railway to be fourteen feet in width, and the cuttings to be twenty-two feet in width at sub-grade ; in both cases no grades to be used which shall exceed one foot in one hundred feet ; no curves to be less than half-a-mile radius, except at Stations ; all culverts and bridges to be of wood of as good a character as those on the present Railroad of the said Port Hope, Lindsay and Beaverton Railway Company ; substantial and sufficient fences to be made ; and cattle guards and crossings put in where required ; the rails to be of wrought iron, eighty tons to the mile ; ties to be of equal quality to those on the line from Port Hope to Lindsay, wrought iron chairs, of not less than eight pounds in weight each ; the rails to be spiked as substantially as upon the said present Railway of the said Company ; the whole of the said intended Railway to be ballasted with clean gravel or sand, equal in quantity to the ballasted portion of the said present Railway and of the best quality the district or vicinage will afford ; and shall and will provide all materials required thereon, and finish and complete the said intended Railway, and open the same for traffic within twelve months from the date and execution of these presents : And furthermore, that they the said parties hereto of the first part, their heirs, executors, administrators and assigns, shall and will at all times during the existence of the said Lease, pay to the

respective treasurers, for the time being, of the Towns of Peterborough and Port Hope, for the use of the said respective Municipalities, a sum equal to six per cent per annum upon the amount to be contributed and furnished by the said Municipalities, respectively, as aforesaid, in equal half yearly payments of three per cent. to commence at and be computed from the expiration of one year from the execution of these presents, unless such Municipalities shall pay over the whole amount of the said respective contributions at an earlier period, in which case the said annual payment is to commence at and be computed from the date of such payment respectively as hereinbefore provided; and also will not during the first ten years of the said term charge, impose, ask for, demand or collect for transportation between Peterborough and Port Hope, any greater or higher rates for freight than the rates set down and specified in the schedule, endorsed on these presents and marked "A" for the articles specified therein, respectively; and that from and after the expiration of that period the tariff of charges for such freight shall be settled by arbitration in the usual way: And furthermore, shall and will well and truly observe, perform, fulfil and keep all the clauses, covenants, conditions and agreements in the said Indenture of Lease, contained on their part, to be observed, performed, fulfilled and kept: And also, shall and will execute and deliver at the reasonable request of the parties of the second part, or their successors in the trust, any further reasonable or necessary conveyance of the premises or property hereby conveyed or intended so to be, or any part thereof, to the said parties of the second part, or their successors in the said trust, their executors, administrators or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property, the title to which shall subsequently to the date hereof, be acquired by the parties of the first part, and connected or used with or belonging or appurtenant to the said intended Railway: And also, that they, the said parties of the first part, now have in themselves good right, full power and authority to grant, assign, transfer, and set over, the premises hereinbefore mentioned and described, and hereby conveyed or mentioned or intended so to be with the appurtenances, unto the said parties of the second part, their successors in the trust and assigns, in the manner and form aforesaid: And it is hereby declared and agreed by and between the parties hereto, that in case the parties hereto of the first part shall make default in the performance or keeping of the said covenants hereinbefore contained or referred to, or any of them (whereby the estate of the said parties hereto of the second part as such Trustees, as

aforesaid, shall become absolute) then and immediately upon and after such default, the parties hereto of the second part, their heirs or assigns or their successors in the said trust, shall and may enter into and upon all the lands and premises hereinbefore mentioned, and hereby conveyed or intended so to be, and to the possession of all and singular the said Railway from Millbrook aforesaid to Peterborough aforesaid, with the appurtenances and all the Stock, Plant, Engines, Cars, and other things belonging thereto, and all other matter and things hereby conveyed or mentioned, or intended so to be, to their own use, but upon trust, nevertheless, for the benefit of the Town Councils of the said Towns of Peterborough and Port Hope, respectively, and either by themselves or their agents, substitutes, or servants, to work and operate the said Railway, and have, use, and employ the same with all such powers, rights, privileges and authorities, as by the said hereinbefore in part recited Indenture of Lease are vested in or conferred upon, or intended to be invested in, or conferred upon the said parties hereto of the first part, and to have, take and receive the earnings and profits thereof, and after making from time to time, all needful repairs, alterations, and additions thereto, and after deducting the expenses thereof, and the expenses of working and operating the said Railway, to pay over half-yearly any surplus of such earnings or profits, that may remain to the respective Treasurers for the time being, of the said respective Towns of Port Hope and Peterborough, in the following amounts or proportions, that is to say : to the Treasurer of the Town of Port Hope, one-fourth of such half-yearly surplus ; and to the Treasurer of the Town of Peterborough, three-fourths of such surplus, to the public uses of the Town Councils of the said Towns, respectively : And it is hereby further declared and agreed, by, and between the parties hereto, that in case the said parties hereto of the second part, or the Trustees or Trustee, for the time being, shall at any time hereafter, enter into the actual possession of the premises hereby conveyed, or intended so to be, for, upon, or in consequence of any breach of any of the provisions hereinbefore contained, by the parties hereto of the first part, their executors, administrators or assigns, then and in such case, it shall and may be lawful to, and for the said parties hereto, of the second part, or the survivor of them, or the Trustee or Trustees, for the time being, by, and with the consent of the Town Council of the said Towns of Peterborough and Port Hope, respectively, to cause the said Railway, lands, stock, and premises, to be sold, at such time, and at such place and in such manner, and upon such terms and conditions as by the said res-

pective Councils, may be appointed and directed in that behalf, and to assign and convey the same to the purchaser or purchasers thereof, to hold for the residue then unexpired of the said term, and subject to the terms and conditions of the said in part recited Indenture of Lease, and to all the clauses, covenants, agreements and stipulations therein contained, and to take and receive the purchase money arising from such sale, and to give valid and effectual releases and acquitances for the same ; and upon receipt thereof, after deducting the expenses of such sales, to pay over the balance to the respective Treasurers, for the time being, of the respective Towns of Port Hope and Peterborough, in the following amounts or proportions, that is to say : to the Treasurer of the Town of Port Hope, one-fourth of such balance, and to the Treasurer of the Town of Peterborough, three-fourths of such balance, to the public uses of the Town Councils of the said Towns, respectively : And it is further mutually agreed by and between the parties hereto, that in case of the death, incapacity, or resignation of the said William Cluxton one of the said parties of the second part, or of any future Trustee who may be appointed to succeed him in the said trust under the provisions of this clause, all his estate, right, interest, power and contract in the premises shall be divested, cease and determine, and the same shall from thenceforth for the purposes aforesaid be vested in and all and singular the trusts and duties herein declared and set forth on his part or behalf to be discharged or executed, shall devolve upon and be executed and discharged by such person as shall be nominated and appointed in that behalf by the said Town Council of the Town of Peterborough, by a By-Law of the said Town Council, or by any instrument to be adopted or passed by the said Town Council, with the usual and requisite formalities of a By-Law, and in like manner in case of the death, incapacity or resignation of the said David Smart, the other one of the said parties of the second part, or of any future Trustee that may be appointed to succeed him in the said trust, under the provisions of this clause, all his estate, right, interest, power and control in the premises, shall in like manner be divested, cease and determine, and the same shall from thenceforth for the purposes aforesaid be vested in and all and singular the trusts and duties herein declared and set forth on his part or behalf to be discharged or executed, shall devolve upon and be exercised and discharged by such person as shall be nominated and appointed in that behalf by the said Town Council of the Town of Port Hope, by a By-Law of the said Council, or by any instrument to be passed or adopted by the

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said last mentioned Town Council, with the usual and requisite formalities, and in the nature of a By-Law; And it is further mutually agreed and understood, that the said parties of the second part, and their successors in the said trust, shall be entitled to receive proper and adequate compensation for any labour or service to be performed by them in the discharge of their trust, in case they should be compelled to take possession of the said premises or to manage the same, and shall and may for that purpose appropriate to themselves and allow each other, and retain any moneys sufficient therefor which may come into their hands; and it is further declared and agreed by and between the parties that the parties of the second part and their successors in the trust, their and each of their heirs, executors, administrators and assigns shall be charged and chargeable respectively only for such moneys as they shall actually receive by virtue of the trust hereby imposed on them, notwithstanding his or their signing any receipt for the sake of conformity, and any one or more of them shall not be answerable for the other or others of them, but each and every of them only for his or their own acts, receipts, neglects and defaults respectively, and that they shall not nor shall either of them be answerable or accountable for any bank, banker or broker or other person with whom or in whose hands any part of the trust moneys shall or may be deposited or lodged for safe custody or otherwise, in the execution of the trusts hereinbefore mentioned, nor for the insufficiency or deficiency of any securities, stocks or funds in or upon which the said trust moneys or any part thereof shall be placed out or invested, nor for any other loss, misfortune or damage, which may happen in the execution of any of the said trusts, or in relation thereto, unless the same shall happen by or through their own wilful default, respectively: And it is further declared and agreed that the receipts of the said Trustees or either of them, or of their, or either of their successors, in the said Trust for any of the said Trust moneys, shall be a sufficient discharge to the person or persons paying the same for the amount specified or to be specified therein, respectively; and that the said person or persons so paying the same, shall not be bound to see to the application of the same, nor be answerable for the non-application or misapplication thereof. And it is further declared and agreed, that until default shall be made by the parties hereto of the first part, their executors, administrators or assigns, in paying the moneys hereinbefore stipulated to be paid by them, or in doing, observing, fulfilling, performing, and keeping the clauses, covenants, provisions, stipulations and agreements, hereinbefore mentioned, or con-

tained or some part thereof, or some or one of them, they, the said parties of the first part, shall be entitled to and may retain full possession and control of and over all and singular the premises hereby conveyed or intended so to be, with the appurtenances in the same manner, and to the same intent, as if these presents had never been made : Provided always, that in the event of any forfeiture made by, or on the part and behalf of the said George Tate and John Fowler, their executors and administrators and their assigns, other than the said parties of the second part, then and in any such case, the said forfeiture shall ensue to and for the benefit of the said parties of the second part herein, their successors and assigns, as such Trustees as aforesaid : In witness whereof, the said parties of the first part and second part, respectively, have hereunto set their hands and seals, and the party of the third part have caused the corporate seal of the said Port Hope, Lindsay and Beaverton Railway Company to be hereunto affixed ; and the President thereof has set his hand hereto, as such President, on the day and year first above written.

(Signed,) GEORGE TATE, [*Seal.*]

(Signed,) JOHN FOWLER, [*Seal.*]

(Signed,) WILLIAM CLUXTON, [*Seal.*]

(Signed,) DAVID SMART, [*Seal.*]

(Signed,) The Port Hope, Lindsay and Beaver- [*Corporate Seal.*]
ton Railway Company, by
J. SHUTER SMITH,
President.

Signed, sealed and delivered in the presence of

(Signed,) THOMAS RIDOUT.

(Signed,) F. FERGUSON.

[Here follows the Schedules referred to, which have reference only to rates to be charged for freight.]

DECLARATION AND RELEASE.

To all to whom these presents shall come :

We, Joseph A. Woodruff, of the Town of Niagara, in the County of Lincoln and Province of Canada, Esquire, and Gilbert McMicken, of the Town of Elgin, in the County of Welland and Province of Canada, Esquire, send greeting :

Whereas, by a certain Indenture of Mortgage bearing date the twenty-ninth day of December A. D., 1855, and made between the Port Hope, Lindsay and Beaverton Railway Company of the first part, and us, the said Joseph A. Woodruff and Gilbert McMicken, of the second part : the said, the Port Hope, Lindsay and Beaverton Railway Company, granted, bargained, sold, transferred and conveyed to us, the line of Railway belonging to the said Company with the appurtenances leading and extending from the Town of Port Hope, in the County of Durham, to the then Village of Lindsay, in the County of Victoria, to have and to hold the same to us the said parties thereto of the second part as security for the payment of one hundred and twenty-five thousand pounds sterling of mortgage bonds or debentures then about to be issued by the said Company, and upon certain trusts therein set forth and declared, and subject to the proviso therein contained for the redemption thereof ;

And whereas, at the time of the making of the said Indenture of Mortgage the said Company were, and still are, authorized and empowered to construct and extend their said Railway from Lindsay aforesaid to the Western limit of Mariposa, and from thence to some point on the Ontario, Simcoe and Huron Railroad, as well as to the Town of Peterborough, from any point on the line of their present Railway between Port Hope and Lindsay aforesaid ;

And whereas, it was the understanding and intention of the parties interested in the said Mortgage that the same should only form a charge upon that portion of the Railway property and works of the said Company situate at Port Hope and Lindsay aforesaid, and forming the connection and lying between those two places, and which was then in course of construction by Messieurs Zimmerman and Balch, the contractors in that behalf

with the said Company, and for whose benefit the Mortgage was principally made, and the said bonds or debentures proposed to be issued ;

And whereas, doubts have arisen upon and in regard to the legal effect and meaning of the said Mortgage, and of certain covenants therein contained, and counsel having given the opinion that notwithstanding the said intention of the said parties to the contrary, the said Mortgage would be construed to extend to and form a first charge and incumbrance in Equity, not only upon the said Railway and premises at Port Hope and Lindsay aforesaid, and between those two places, but also upon any portion of the Railway which the said Company are authorized and empowered to construct as aforesaid, by reason whereof the extension of the said Railway to the westward of Lindsay, and the completion of the connection between the present Railway and the Town of Peterborough are likely to be greatly retarded, if not wholly defeated ;

And Whereas the traffic and business of that portion of said Railway, lying at and between Port Hope and Lindsay, and intended to be included in and charged by the said Mortgage, would be greatly increased, and the security of the holders of the said Mortgage bonds would be proportionably enhanced by the construction and completion of the said other portions of the said Railway ; and it is therefore desirable and expedient for the interest of the said Bondholders, and only just and due to the said Railway Company, that the said Mortgage should be confined and limited in its operation and effect to that portion of the said Railway works and property of the said Company, with the appurtenances situate at Port Hope aforesaid, and Lindsay aforesaid, and forming the line or connection between those places, according to the said understanding and intention of the said parties interested therein :

Therefore we the said Joseph A. Woodruff and the said Gilbert McMicken, in consideration of the premises, and at the request of the said Railway Company, do hereby so far as by this declaration we can, declare that for, and notwithstanding anything in the said Indenture of Mortgage contained, the said Indenture was not intended to, and does not, and shall not, form any charge or encumbrance upon any portion of the said Railway of the said Company, that may be constructed westward of Lindsay aforesaid ; nor upon that portion of the same that remains yet to be built or constructed, to form or complete the connection between the present Railway of the said Company, and the Town of Peterborough aforesaid, nor upon anything belong-

ing or exclusively appertaining to the said last mentioned portions of Railway or either of them, the rolling stock of the said Company, being and being intended by the said Mortgage to be treated as not exclusively belonging to any section of the Railway built, or to be built by the said Company, but as common property covered by said Mortgage, with the exception of any rolling stock or tolls used, or to be used or to be derived from the branch between Millbrook and Peterborough, which was not in the contemplation of any party at the time of the execution of the Mortgage, nor intended in any way to be affected thereby, and so far as we can we do hereby release and discharge the said last mentioned portions of the said Railway from the said Mortgage.

In witness whereof, we the said Joseph A. Woodruff and Gilbert McMicken, have hereunto set our hands and seals this sixth day of August in the year of our Lord one thousand eight hundred and fifty-seven.

(Signed,) JOSEPH A. WOODRUFF. [Seal.]

(Signed,) G. McMICKEN. [Seal.]

Signed, sealed and delivered

in the presence of

(Signed,) JOS. C. MORRISON,
as to Woodruff's signature.

(Signed,) J. S. SMITH.

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